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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,643	04/09/2004	Robert J. Medoff	U 015145-3	9009
140	7590	06/02/2006	EXAMINER	
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			SWIGER III, JAMES L	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/821,643	Applicant(s) MEDOFF, ROBERT	
	Examiner James L. Swiger	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 46-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-44 is/are rejected.
- 7) ☒ Claim(s) 11 and 45 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/9/04 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 46-53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/20/2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-5, 6-7, 12, 13, 22-23, 26-28, and 38-41 rejected under 35 U.S.C. 102(b) as being anticipated by Medoff (US 5,709,682). Medoff discloses a device to fix bone fragments comprising a buttress member (41), a fixation washer having a body (46) for securing a stable bone fragment, a wire element having a U-shaped bend (12), with opposite legs extending from the U-shaped end (13 and 11), with the legs being considered to be bent away (49) and can engage with the bone fixedly (15), a fixation washer also comprising tabs and even a plurality of tabs (disposed on opposing edges of the body) for engaging the legs of the body (see profile of 46 in Fig. 4), the body having a hole (center of 46, Fig. 2) and may also have a second hole (see 16 on Fig. 9) capable of passage of a bone screw functionally adapted to secure the wire element to bone fragment, and wherein the means for providing counter-bearing pressure may be a combination of the washer tabs (ends of 46 and the

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bone screw (44), and wherein the wired body has a smaller spacing compared to the legs at the U-shaped bend (see Fig. 21) compared to the opposite end of the device (proximate to 15). The device also is capable of securing a second bone fragment (see Abstract line 2). Medoff also discloses a device with a projection extending lengthwise between the legs of the wire element (62, Fig. 21) with a second hole (64) capable of penetrating a bone fragment and wherein the ends extend at an angle relative to one another though are substantially parallel. The legs are also of equal length (see profile in Fig. 21). The buttress pin also has legs that are bend outwardly with respect to one another (13 and 11) in Fig. 10.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 14-21, 30-34, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medoff '682 in view of Wellisz et al. (US 6,302,884). Medoff discloses the claimed invention except for a further tab on the washer to engage one opposite side of a leg, capable of snap-engagement, a means for applying counter-bearing pressure to oppose rotation, is inclined, where one tab is disposed between two tabs, and wherein the second hole is capable of offsetting the buttressing portions.

Wellisz et al. disclose a bone fixation device comprising a further tab (22), that is capable of snap-in engagement with a wire in relation to side 20 on one side of the leg,

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has a means for applying counter-bearing pressure (44) to oppose rotation that is also threaded and may be expandible in relation to the washer itself for counter-pressure purposes, the tab is inclined (22, Fig. 5), has one tab disposed between two tabs (tab 21 disposed between 20a and 22a), and wherein a second hole (40) is capable of offsetting the buttressing portions, depending on how it is secured. These modifications of the washer, though disclosed to be inserted into bone, are capable of engagement with a rod to secure the plate in use (See Col. 61-67 through Col. 5 line 37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Medoff having at least another tab on the washer element capable of snap engagement with a rod, a means for applying counter-bearing pressure, and an inclined tab in view of Wellisz et al. to better sure the fracture fixation system in use.

Claims 8-10 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medoff '682. Medoff discloses the claimed invention except for the legs being an unequal shape. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the fracture fixation system having at least legs of unequal length or bent portion of unequal length, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of securing a fracture fixation system. In re Dailey and Eilers, 149 USPQ 47 (1966).

Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medoff '682. Medoff '682 discloses the claimed invention except a device body that is made of plastic or metal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the fixation washer of metal or plastic since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Allowable Subject Matter

Claims 11 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JS 5/30/2006

JLS


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER